important fact was that the claimant was the Executive Director of a subsidiary of MITCB. He contended that the Industrial Court should have asked:

> Was the claimant in this case the very brain or directing mind of Mulpha Trading?

I agree with Mr. Sivabalah that the Industrial Court should have examined the claimant's function and responsibility as a Director in Mulpha Trading and not his function and responsibility as an Executive in MITCB in order to determine whether or not he could be considered as a "workman" under the Act. Mulpha Trading was a subsidiary of MITCB. He joined the MITCB group as an Executive and rose up to become an Executive Director of one of the companies in the group. To suggest that he must be considered as still being an executive of MITCB at the material time is to my mind repugnant to good sense. It is irrelevant that he was not a Director of MITCB itself. He was an Executive Director of one of its subsidiaries. MITCB was a holding company carrying on business through its subsidiaries.

I find the finding of the Industrial Court on the issue clearly erroneous. The Industrial Court had committed an error going into jurisdiction. I therefore allowed the application with costs.

NAM HO TRAVEL SERVICE (S) PTE. LTD.

v.

PROGRESSIVE INSURANCE SDN. BHD.

HIGH COURT, JOHOR BAHRU
DATO' ALAUDDIN BIN DATO' MOHD. SHERIFF J.
[CIVIL SUIT NO. 25-79-85]
5 MAY 1993

TORT: Road Accident - Claim for special damages - Principle of damages in tort - Driver insured by defendant - Evidence of negligence not challenged by defendant - Whether defendant fully liable - Plaintiff incorporated in Singapore - Exchange of currency - Proper date for determining value of currency.

The plaintiff in this case claimed from the defendant special damages for the losses it had suffered as a result of an accident between the plaintiff's tour bus and a car whose driver was insured by the defendant. The accident occured on 24 October 1982 at 34 $^1/_2$ mile stone Johor Bahru - Ayer Hitam road. At the hearing, evidence was adduced by the plaintiff which, if not refuted, would conclusively establish the negligence of the car driver but the defendant chose not to challenge this evidence.The plaintiff was a tour bus company incorporated in Singapore having its base of operation in that Republic. The issues before the court were centred on the following questions:

1. Apportionment of liability.
2. Compensation for loss of use of the tour bus.
3. Proper date for determining the currency exchange rate.

Held:

[1] The motorcar had not only encroached into the plaintiff's right of way before the accident but had also been driven at exessive speed. On the other hand the evidence showed that the driver of the motorbus had taken every reasonable step as a prudent driver to avoid the collision.The defendant must therefore be held 100% liable for the accident.

[2] It is perfectly reasonable for a tour bus company to operate on a basis of $^1/_3$ operation cost and having regard to the collection made by the plaintiff from the tours in October 1982, the plaintiff's claim for the loss of use of the bus at S$800 per day is not at all unreasonable.

[3] The principle of damages in tort is to compensate and not to enrich. The plaintiff is to be put as near as possible to the position he was in before the accident and not entitle him to a profit from a misfortune.In this case, as repairs on the motorbus had been carried out in 1982 the plaintiff should only be entitled to recover the value of the currency as at that date.

[Judgement entered for the plaintiff].

Case referred to:
Lee Tai Hoo & Anor. v. Lee Swee Keat & Anor. [1987] 1 MLJ 304 ***(dist)***

For the plaintiff - K. Chandra; M/s. Chandra & Associates
For the defendant - Gita Radhakrishna; M/s. Varughese, Kumar, Netto & Partners

JUDGMENT

Alauddin bin Dato' Mohd. Sheriff J:
The plaintiff's claim against the defendant arises out of a motor accident involving the plaintiff's motorbus SZ 2895 and the defendant's insured motorcar NN 3020.

On 24 October 1982 at about 5.00 p.m. whilst the plaintiff's servant was driving the motorbus SZ 2895 along the Johor Bahru/Air Hitam Road (at about 34 $^1/_2$ miles to Johor Bahru) heading towards the direction of Johor Bahru the deceased defendant's insured driver, Tan Sek Kim, driving motorcar NN 3020 and coming from the opposite direction caused the said motorcar to collide with the plaintiff's motorbus and thereby causing damage to the said motorbus.

Before the start of the hearing parties had agreed on the following items of special damages:

(i) Cost of Repairs	(a)	S$43,218.40
	(b)	S$14,549.30
		S$57,767.70
(ii) Towing Charges	(a)	RM 530.00
	(b)	S$ 150.00
(iii) Cost of Adjuster's Report	(a)	RM 710.00
	(b)	S$ 228.00
Total agreed special damages:		S$58,145.70&RM 1,240.00

The issues before the Court are:

(a) Liability
(b) Loss of use of motorbus SZ 2895 @ S$800 per day for 48 days.
(c) the relevant date for determining the exchange rate.

Liability

The only evidence adduced in this respect was that of PW2, Mr. Lee Chong Yile, the Co-driver of motorbus SZ 2895 at the material time. The driver himself had died about one year ago.

In his evidence PW2 stated that on that fateful day he was seated in front of the motorbus beside the driver. Whilst reaching Air Bemban, he saw a car NN 3020 coming from the opposite direction and encroaching onto their side of the road. On seeing this, the driver of the motorbus swerved to the left but failed to avoid the collision. The motorcar NN 3020 had earlier overtaken another vehicle in front of it before encroaching onto the other side of the road. After the collision the motorbus then knocked into a stone on the left side of the road and came to a stop.

The sketch plan and the key (AB 4, 5) shows the brake marks of the motorbus commencing from the grass verge by the roadside. The brake marks also start close to K1, the stone which the bus had hit after the collision. It is abundantly clear from the sketch plan that the motorbus had gone out of control after hitting the stone. This explains why the brake marks are so apparent from the stone and none on the road proper. This also supports the evidence of PW2 that the bus driver had swerved to the left when he saw the encroaching car and knocked into the stone after the car had collided into the bus. The photograph (AB 8) also shows the damage to the bus at the body near the right tyre. The frontal damage to the bus could have occurred on collision with the stone. I have no doubt that the motorcar had collided into the motorbus at such a great speed as otherwise the damage to the motorbus would not have been so severe.

PW2's evidence was not at all challenged by the defendant's Counsel. Looking at the sketch plan and the key it could be ascertained that the plaintiff's half of the road (B to C) measures 11 feet 9 $^1/_2$ inches wide. F1, the rear right tyre of the defendant's car is 7 feet from the left edge of the plaintiff's road B. This goes to prove that

the defendant's car had encroached about 4 feet 9 $^{1}/_{2}$ inches into the plaintiffs' road after the collision. It is possible to suggest that the motorcar could have encroached further in before the collision as the bus had veered left into the grass verge in order to avoid the collision. I am certain that the driver of the motorbus had taken every reasonable step as a prudent driver to avoid the collision. None of the 36 passengers in the bus had suffered any injury and this speaks well of the driver's skill and prudence in driving.

Having had the advantage and benefit of hearing the unrefuted evidence of PW2 which is further supported by the sketch plan, I have no hesitation in holding that the defendant is 100% liable for the accident. As to the authorities cited in support of the defendant's case, I must say with respect that each case must be decided on its own facts.

Loss of use

The period for loss of use was agreed at the outset to be 48 days, that is, 12 days per month for 4 months. The issue to be determined is the quantum.

Evidence in this respect was given by PW3, Mr. Seow Sin Poh, the plaintiff's financial controller. PW3 gave evidence in respect of two tours undertaken by motorbus SZ 2895 in the month of October 1982. In this respect he referred to:

P1 (a) a schedule of tours for October 1982.
P1 (b) details of a tour on 6 October 1982 and
P1 (c) details of a tour on 22 October 1982.

With regard to P1 (b) PW3 testified that this was a 4 day tour. Total collection was S$6,547 and that their profit was worked on a principle of $^{2}/_{3}$ of total collection. Thus for this tour the profit would be $l,091 per day. Likewise in respect of P1 (c) he testified that this was a 3-day tour. Total collection was S$3,564. Working on the same principle of a profit margin of $^{2}/_{3}$ of total collection profit per day was S$792.

Further, the schedule [P1 (a)] shows that some coaches make less trips but for longer periods e.g. 7-day tours. PW3 also gave evidence that this was during the off-peak season and during peak season e.g in November, the total collection could have increased substantially. I am of the view that it is perfectly reasonable for a tour bus company which provides transport only (and not meals and hotel accommodation) to operate on a basis of $^{1}/_{3}$ operation cost. It was also in evidence that the breakdown of drivers' salaries and petrol cannot be deducted from the total collection for a trip as drivers' salaries are paid monthly. In a situation where a person makes one trip or in the case of a small company operating only one bus it would be possible to provide actual petrol cost and deduct the salary of a driver to come to an exact figure. However where there are several coaches and numerous employees involved such a primitive method of determining profit is not desirable.

Having heard PW3's evidence which is further supported by P1 (a) (b) and (c) I am of the opinion that the plaintiff's claim for loss of use at S$800 per day is not at all unreasonable.

Exchange Rate

Parties had at the outset agreed that the appropriate date for determining the exchange rate would be either:

(a) October 1982 or
(b) 15 March 1993

In support of her submission that the exchange rate should be 15 March 1993 (date of hearing) Counsel for the plaintiff cited the case of *Lee Tai Hoo & Anor. v. Lee Swee Keat & Anor.* [1987] 1 MLJ 304. In that case damage had occurred to a building and the plaintiff, a minor then, could not reinstate the same until after the judgment, that is, upon attaining majority. As such the cost of repairs as at the date of judgment was taken. However in the present case there are no special circumstances, as repairs had been carried out in 1982. It follows therefore, that the plaintiff should only be entitled to recover the value of the currency as at that date.

Further, this being a claim for special damages the plaintiff is entitled to interest as from 24 October 1982 to date of judgment and thereafter from the date of judgment to date of recovery. The plaintiff is therefore in no way prejudiced or put to loss thereby. They are not kept out of money that would have been theirs had payment been made in 1982.

On the contrary should the rate of exchange be taken on 15 March 1993 the defendant stands to be unduly prejudiced and penalised and the plaintiff would be unjustly enriched contrary to the spirit and intendment of the doctrine of compensation.

The principle of damages in tort is to compensate and not to enrich. The plaintiff is to be put

as near as possible to the position he was in before the accident and not entitle him to profit from a misfortune.

Plaintiff's Counsel had agreed that it is the duty of the Court to ensure that the plaintiff is not put out of pocket by the defendant's negligence. Therefore the plaintiff is in no way prejudiced or put out of pocket if he is compensated for according to the exchange rate in October 1982 as this would precisely be the expenses incurred at the material time. The question begs to be asked whether the plaintiff would seek to recover as per the exchange rate at the date of trial if the same had depreciated in value. I will therefore hold that the exchange rate applicable here would be the one prevailing in October 1982.

Based on the above reasons, I order judgment for the plaintiff as follows:

(a) Agreed damages for repairs, towing and adjusters report in Malaysian currency based on the exchange rate in October 1982.
(b) Loss of use for 48 days at S$800 per day in Malaysian Currency based on the exchange rate in October 1982.
(c) costs to be taxed.
(d) Interest at 3% per annum on the above total from date of accident 24 October 1982 to 15 March 1993 and thereafter at 8% per annum until date of realisation.

NG CHIN SIU & SONS RUBBER ESTATE SDN. BHD.

v.

DATUK BANDAR, KUALA LUMPUR

HIGH COURT, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J.
[ORIGINATING MOTION NO. R2-25-67-92]
7 AUGUST 1993

LOCAL GOVERNMENT: Assessment of annual value of land - Local Government Act 1976, s. 2(c) - Assessment based on finding that land was a vacant land - Land planted with old and untapped rubber trees - Whether land a vacant land - Whether finding and assessment proper - Local Government Act 1976, ss. 2(c)(ii), 143, 145.

The respondent made an assessment on the annual value of the appellant's land under the Local Government Act 1976. At the time the assessment was made the land was planted with old and untapped rubber trees. Based on the observation that the land was left idle and somewhat abandoned, the respondent made a finding that the land was a vacant land thereby subjecting the property to a valuation under s. 2(c)(ii) of the Act which prescribed that the assessment of such land was to be calculated at an amount equivalent to 10% of the market value of the land. Accordingly the respondent assessed the value at RM 2,994,000. The appellant appealed against the assessment and contended that the valuation was improperly made as the land was not a vacant land.

The issue before the court was whether the respondent was correct in regarding the said land as a vacant land.

Held:
At the material date the land in question was planted with rubber trees. As the said land was being used as a rubber land, it cannot be regarded as vacant under proviso (c) of s. 2 of the Act. The annual value therefore should be the estimated gross annual rent the said land might reasonably be expected to let from year to year.

[Appeal allowed].

Cases referred to:
K Shoe Shops Ltd. v. Hardy (Valuation Officer) & Ors. [1983] Vol. 3 All ER 609 ***(refd)***
Kuala Lumpur v. Bukit Jalil Estates Sdn. Bhd. [1988] 2 MLJ 179 ***(refd)***

Legislation referred to:
Local Government Act 1976, ss. 2(c)(ii), 142, 143(1), 145